

DATE: March 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05131

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 33-year-old employee of a defense contractor, has a history of lying, dishonesty, and conduct involving questionable judgment. His excellent performance of his primary duties does not mitigate the security concerns presented by his conduct. Applicant failed to demonstrate the high degree of judgment, reliability, and trustworthiness required of persons handling classified information. Clearance is denied.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant the Applicant a clearance. In accordance with the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 26 July 2002 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the personal conduct (Guideline E) personnel security guideline.

Applicant answered the SOR in an undated writing. The case was originally assigned to Administrative Judge John Erck on 3 October 2002, but was transferred to Administrative Judge Paul Mason because of Judge Erck's caseload. By letter dated 29 October 2002, Applicant's facility security officer notified DOHA that Applicant's employment had been terminated. As a result, processing of the case ceased. On 10 January 2003, the case was reopened and assigned to me. On 25 February 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of six exhibits. Applicant testified on his own behalf and submitted two exhibits. A transcript (Tr.) of the proceeding was received on 4 March 2003.

FINDINGS OF FACT

In January 1991, Applicant was arrested for, and charged with, petit theft from his employer, a department store. By using another employee's access code, Applicant had credited payments to the lay-away accounts of two other employees without their knowledge. Applicant was caught because the two employees brought the unexplained credits to the attention of department store officials. Applicant was convicted of an amended charge of unauthorized use of property. Applicant was sentenced to 30 days in jail, suspended, and fined \$200. His employment was also terminated. Tr. 19; Ex. 2 at 1; Ex. 5; Answer.

In December 1993, Applicant pled guilty to, and was convicted of, recklessly causing alarm to another by creating a condition which presents a risk of physical harm by an act which served no lawful purpose. Applicant sent a letter to a woman which stated that "if you are not careful I am going to come after you and your sister and have my way with the both of you." Applicant was sentenced to 30 days in jail, suspended, and fined \$250. Ex. 6; Ex. 2 at 1; Ex. 3 at 2; Answer. He was also ordered to attend counseling. His treatment lasted six months. Tr 18-19.

In February 2001, Applicant's employer terminated his employment for spreading false information. Applicant falsely told co-workers that he had been involved in a automobile accident, killing a 16-year-old boy. When his supervisor confronted him with his lie, Applicant originally insisted it was true. Tr. 15; Ex. 1 at 9; Ex. 3 at 1; Ex. 4.

In a signed, sworn statement, dated 29 April 2002, Applicant admitted lying on multiple occasions. Answer. He has told so many lies he cannot keep them all straight. Ex. 2 at 2.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

CONCLUSIONS

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive, ¶ E2.A5.1.1. The following applicable conditions in this case could cause a security concern:

(1) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. Directive, ¶E2.A5.1.2.1.

(2) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency. Directive, ¶E2.A5.1.2.5.

There are no listed mitigating conditions applicable to Applicant's case.

The evidence of record, including his admissions, establish a prima facie case regarding each of the allegations against Applicant. Applicant is a compulsive liar. Tr. 11. He understands the difficulties this problem has caused in his life and is "working hard on correcting his actions. Tr. 12. Applicant is in good standing with his current employer and performed well while working with the Department of Defense (DoD). Exs. A, B. Although he received a favorable character statement from a DoD employee, he failed to advise the employee of the reason he needed it. I have considered the favorable character references. Nevertheless, Applicant's history of lying, dishonesty, and poor judgment make him a poor candidate to hold a security clearance. He has not demonstrated the high degree of judgment, reliability, and trustworthiness required of persons handling classified information. ISCR Case No. 99-0123, 2000 DOHA LEXIS 8 at *8 (App. Bd. 2000). The finding is against Applicant.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.